



## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 165

[Docket Number USCG-2022-0483]

RIN 1625-AA87

### Security Zone; San Francisco Bay, San Francisco, CA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

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**SUMMARY:** The Coast Guard is proposing to establish a security zone in the navigable waters of the San Francisco Bay near Yerba Buena Island within the San Francisco Captain of the Port (COTP) zone. This security zone is necessary to provide for the security of military service members on board vessels moored at the pier and the government property associated with these valuable national assets. This proposed rulemaking would prohibit the entry of, transiting through, or anchoring within a portion of the San Francisco Bay extending from Yerba Buena Island unless specifically authorized by the Captain of the Port San Francisco. We invite your comments on this proposed rulemaking.

**DATES:** Comments and related material must be received by the Coast Guard on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** You may submit comments identified by docket number USCG-2022-0483 using the Federal Decision Making Portal at <https://www.regulations.gov>. See the “Public Participation and Request for Comments” portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this proposed rulemaking, call or email LT William Harris, Sector San Francisco, U.S. Coast Guard; telephone 415-399-7443, email [SFWaterways@uscg.mil](mailto:SFWaterways@uscg.mil).

## **SUPPLEMENTARY INFORMATION:**

### **I. Table of Abbreviations**

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	<b>Federal Register</b>
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

### **II. Background, Purpose, and Legal Basis**

In October 2021, the Captain of the Port (COTP) San Francisco identified a need for clearer Aids to Navigation to inform the boating public of restricted areas near Yerba Buena Island. Further discussion discovered that current regulations established a Restricted Area, but not a Security Zone. The COTP has determined that potential security concerns associated with the mooring of Coast Guard Cutters would necessitate a Coast Guard Security Zone.

The purpose of this rulemaking is to ensure the security of Coast Guard facilities, personnel, and vessels, at all times within the navigable waters of the San Francisco Bay on the east side of Yerba Buena Island from a point along the southeastern shore of Yerba Buena Island at 37°48'27" N, 122°21'44" W; east to 37°48'27" N, 122°21'35" W; north to 37°48'49" N, 122°21'35" W, a point on the northeastern side of Yerba Buena Island. The Coast Guard is proposing this rulemaking under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231).

### **III. Discussion of Proposed Rule**

The COTP is proposing to establish a security zone which would cover all navigable waters of the San Francisco Bay on the east side of Yerba Buena Island from a point along the southeastern shore of Yerba Buena Island at 37°48'27" N, 122°21'44" W; east to 37°48'27" N, 122°21'35" W; north to 37°48'49" N, 122°21'35" W, a point on the northeastern side of Yerba

Buena Island. This zone is intended to protect the personnel and facilities of U.S. Coast Guard units and assets located on and within the waters of Yerba Buena Island. No vessel or person would be permitted to enter the security zone unless authorized by the COTP. The regulatory text we are proposing appears at the end of this document.

#### **IV. Regulatory Analyses**

We developed this proposed rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

##### *A. Regulatory Planning and Review*

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This NPRM has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size and location of the security zone. The effect of this proposed rule will not be significant because vessel traffic can pass safely around the area, and this proposed rule will encompass only a small portion of the waterway.

##### *B. Impact on Small Entities*

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the security zone may be small entities, for the reasons stated in section IV.A above, this proposed rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), we want to assist small entities in understanding this proposed rule. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the FOR FURTHER INFORMATION CONTACT section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

### *C. Collection of Information*

This proposed rule would not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

### *D. Federalism and Indian Tribal Governments*

A rule has implications for federalism under Executive Order 13132 (Federalism), if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments) because it would not have a

substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

*E. Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the potential effects of this proposed rule elsewhere in this preamble.

*F. Environment*

We have analyzed this proposed rule under Department of Homeland Security Directive 023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves a security zone that would prohibit entry within navigable waters of the San Francisco Bay on the east side of Yerba Buena Island from a point along the southeastern shore of Yerba Buena Island at 37°48'27" N, 122°21'44" W; east to 37°48'27" N, 122°21'35" W; north to 37°48'49" N, 122°21'35" W, a point on the northeastern side of Yerba Buena Island. Normally such actions are categorically excluded from further review under paragraph L[60a] of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A preliminary Record of Environmental Consideration supporting this determination is available in the docket. For instructions on

locating the docket, see the **ADDRESSES** section of this preamble. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

#### *G. Protest Activities*

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

### **V. Public Participation and Request for Comments**

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

*Submitting comments.* We encourage you to submit comments through the Federal Decision Making Portal at <https://www.regulations.gov>. To do so, go to <https://www.regulations.gov>, type USCG-2022-0483 in the search box and click "Search." Next, look for this document in the **Search Results** column, and click on it. Then click on the **Comment** option. If you cannot submit your material by using <https://www.regulations.gov>, call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this proposed rule for alternate instructions.

*Viewing material in docket.* To view documents mentioned in this proposed rule as being available in the docket, find the docket as described in the previous paragraph, and then select "Supporting & Related Material" in the Document Type column. Public comments will also be placed in our online docket and can be viewed by following instructions on the <https://www.regulations.gov> Frequently Asked Questions webpage. We review all comments

received, but we will only post comments that address the topic of the proposed rule. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive.

*Personal information.* We accept anonymous comments. Comments we post to <https://www.regulations.gov> will include any personal information you have provided. For more about privacy and submissions to the docket in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

### **List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard is proposing to amend 33 CFR part 165 as follows:

### **PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS**

1. The authority citation for part 165 continues to read as follows:

**Authority:** 46 U.S.C. 70034, 70051; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.2.

2. Add § 165.1189 to read as follows:

#### **§ 165.1189 Security Zone; San Francisco Bay, San Francisco, CA.**

(a) *Location.* The following area is a security zone: all navigable waters of the San Francisco Bay on the east side of Yerba Buena Island from a point along the southeastern shore of Yerba Buena Island at 37°48'27" N, 122°21'44" W; east to 37°48'27" N, 122°21'35" W; north to 37°48'49" N, 122°21'35" W, a point on the northeastern side of Yerba Buena Island. These coordinates are based on North American Datum (NAD) 83.

(b) *Regulations.* (1) In accordance with the general security zone regulations in subpart D of this part, entry into the area of the security zone described in paragraph (a) of this section is prohibited unless authorized by the Captain of the Port (COTP) San Francisco.

- (2) The security zone is closed to all vessel traffic, except as may be permitted by the

COTP.

(3) To seek permission to enter, contact the COTP by VHF Marine Radio channel 16 or through the 24-hour Command Center at telephone (415) 399-3547. Those in the security zone must comply with all lawful orders or directions given to them by the COTP.

(c) *Enforcement.* The Captain of the Port will enforce the security zone described in paragraph (a) of this section and may be assisted in the patrol and enforcement of the security zone by any Federal, State, county, municipal, or private agency.

Dated: July 12, 2022.

Taylor Q. Lam,  
Captain, U.S. Coast Guard,  
Captain of the Port San Francisco.

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